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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-3440

CLARENCE F. FOSTER, PETITIONER,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, RESPONDENT.

Before PIETSCH, *Judge*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On October 12, 2016, Clarence F. Foster filed through counsel a petition for extraordinary relief in the nature of a writ of mandamus. In his petition, Mr. Foster asked the Court to compel the Secretary to issue a decision on his September 2014 motion for revision based on clear and unmistakable error of a July 16, 1954, regional office (RO) decision denying entitlement to VA benefits for epilepsy.

On October 26, 2016, the Court ordered the Secretary to respond to Mr. Foster's petition. On November 15, 2016, Mr. Foster filed a motion to dismiss his petition. In his motion, he states that VA granted the relief sought by his petition. On November 16, 2016, the Secretary filed a motion to stay the case.

This Court has the authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Before the Court may issue a writ, three conditions must be satisfied: (1) the petitioner must demonstrate a lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that the issuance of the writ is warranted. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004).

This Court adheres to the case-or-controversy jurisdictional constraints provided for in Article III of the U.S. Constitution. *See Mokal v. Derwinski*, 1 Vet.App. 12, 13-15 (1990). When the relief requested in a petition has been obtained, the appropriate course of action is for the Court to dismiss the petition as moot. *See Thomas v. Brown*, 9 Vet.App. 269, 270-71 (1996) (per curiam).

order). Because Mr. Foster has obtained the relief he was seeking, the Court will grant his motion to dismiss his petition as moot.

Upon consideration of the foregoing, it is

ORDERED that the Court's October 26, 2016, order is REVOKED. It is further

ORDERED that Mr. Foster's November 15, 2016, motion to dismiss his October 12, 2016, petition for extraordinary relief is GRANTED. It is further

ORDERED that the Secretary's November 16, 2016, motion to stay proceedings is DISMISSED as moot. It is further

ORDERED that Mr. Foster's October 12, 2016, petition for extraordinary relief in the nature of a writ of mandamus is DISMISSED as moot. Under Rule 41(b) of this Court's Rules of Practice and Procedure, this order is the final judgment and mandate of the Court.

DATED: November 30, 2016

BY THE COURT:



CORAL WONG PIETSCH
Judge

Copies to:

Sandra E. Booth, Esq.

VA General Counsel (027)